

SUPPORTING STATEMENT

A. Justification:

The Commission is seeking an extension (no change in reporting or recordkeeping requirements) from the OMB in order to obtain the full three year clearance. Since the last submission to the OMB, the Commission has modified the number of respondents/responses, burden hours and annual costs. This is due to the changing number of licenses estimated to be auctioned during a given year. In spite of the few applications that are actually affected, the number of potential participants is in the hundreds, perhaps thousands. In other words, while few applicants have actually attempted to take part in the Tribal Lands Bidding Credit (TLBC) program, almost all applicants in any auction where TLBCs are available could take part in the program. Because so many could possibly take part, the Commission needs continued OMB approval for this collection.

1. On June 8, 2000 the Commission adopted a Report and Order which adopted rules and policies to encourage the deployment of wireless services to tribal lands. Pursuant to the objectives and requirements of Section 309(j)(3) and (4) of the Communications Act (47 U.S.C. §§ 309(j)(3) and (4)), in conjunction with data from the 1990 Census which indicates that communities on tribal lands have historically had less access to telecommunications services than any other segment of the population. The Commission adopted rules and policies to encourage deployment of wireless services to tribal communities.

On March 7, 2003, the Commission adopted a Second Report and Order which extended the time period during which winning bidders can negotiate with relevant tribes to obtain the certification needed to obtain the bidding credit in a particular market from 90 days to 180 days. Further, the Second Report and Order clarified various administrative matters involved in implementing the bidding credit.

On August 18, 2004, the Commission adopted a Third Report and Order which raised the wireline telephone penetration rate at which tribal lands are eligible for a bidding credit from 70 percent or less, to 85 percent or less, and increased the amount of the bidding credit available to carriers that pledge to deploy on and serve qualifying tribal lands.

For information collection purposes, a winning bidder seeking a bidding credit to serve a qualifying tribal land within a particular market must:

- indicate on the long-form application (FCC Form 601) that it intends to serve a qualifying tribal land within that market;
- within 180 days after the filing deadline for the long-form application, amend its long-form application to identify the tribal land it intends to serve and attach a certification from the tribal government stating that:
 - a) the tribal government authorizes the winning bidder to site facilities and provide service on its tribal land,
 - b) the tribal area to be served by the winning bidder constitutes qualifying tribal land;

- c) the tribal government has not and will not enter into an exclusive contract with the applicant precluding entry by other carriers, and will not unreasonably discriminate among wireless carriers seeking to provide service on the qualifying tribal land; and
- d) provide certification of the telephone penetration rates demonstrating that the tribal land has a penetration level at or below 85 percent.

Also, each winning bidder must:

- within 180 days after the filing deadline for long-form applications, certify by endorsing the Schedule B Form, that it will comply with the build-out requirements and consult with the tribal government regarding the location of facilities and deployment of service on the tribal land;
- within 15 days of the third anniversary of the initial grant of its license, file a notification (Schedule K Form) that it has constructed and is operating a system capable of serving 75% of the population of the qualifying tribal land for which the credit was awarded; and
- repay within 30 days of the third anniversary of the initial grant of its license, the bidding credit amount in its entirety, plus interest, if it fails to provide the post-construction notification (Schedule K Form) required by section 1.2110(f)(3)(viii).

In addition, a winning bidder seeking a credit in excess of the amount calculated under the Commission's bidding credit formula must:

- submit a waiver request demonstrating that the infrastructure costs exceed the amount of the standard bidding credit; and
- include a certification by an independent auditor that the estimated costs are reasonable.

A winning bidder receiving a higher credit must:

- within 15 days of the third anniversary of the initial grant of its license, file a certification that the credit amount was spent on infrastructure to provide wireless coverage to qualifying tribal lands, which also includes a final report prepared by an independent auditor verifying that the infrastructure costs are reasonable to comply with our build-out requirements.

As noted on the Form OMB 83I, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Statutory authority for this collection of information is contained in 47 U.S.C. §§ 151, 154(i), 303(r), and 309(j), as amended.

2. The Commission believes that the lack of basic telecommunications services puts affected tribal communities at a social and economic disadvantage. This information will be used to ensure that tribal communities within federally-recognized tribal areas have access to wireless telecommunications services equivalent to that of the nation as a whole. Although there are currently three applicants taking part in the TLBC program, almost all applicants in any auction where TLBCs are available could take part in the program. Because so many could participate, we need to continue this collection.

3. This information will be filed electronically using FCC Form 601, which has already received OMB clearance under OMB Control Number 3060-0798. The Wireless Telecommunications Bureau has conducted an analysis to ensure that improved information technology is available for use to the public for collecting data, thereby reducing the burden on the public.
4. This agency does not impose a similar information collection on the respondent. There is no similar data available.
5. In an effort to provide incentives to small entities, credit levels for the tribal lands bidding credits were adopted to increase the potential recovery level for infrastructure costs.
6. This collection is required only one time. If we do not obtain the information, the Commission will not be able to adequately assess whether or not the deployment of wireless telecommunications services is timely, reasonable, and nondiscriminatory in nature in tribal communities.
7. No known circumstances would require this collection to be conducted in a manner inconsistent with the guidelines in 5 C.F.R. 1320.6.
8. The public has been given an opportunity to comment on this collection via a 60 day notice published in the Federal Register on May 23, 2007 (72 FR 28973). No comments in reference to the paperwork burdens in this collection were filed. A copy of the 60 day notice is included in this submission to the OMB.
9. A winning bidder may receive a \$500,000 credit for up to the first 200 square miles (518 square kilometers) of qualifying tribal land within its license area. In instances where qualifying tribal lands within a license area exceed 200 square miles (518 kilometers), a winning bidder may receive an additional \$2500 per square mile (2.59 square kilometer), or \$500,000 for each additional 200 square miles (518 square kilometers). All credits will be subject to a maximum limit based on the gross bid amount for the license for which the credit is sought. Where the gross bid amount is \$1 million or less, the cap will be 50 percent of the gross bid. Where the gross bid amount is greater than \$1 million and equal to or less than \$2 million, the cap will be \$500,000. Finally, where the gross bid amount exceeds \$2 million, the cap will be 35 percent of the gross bid. The credit will be refunded from the applicant's final payment.
10. There is no need for confidentiality.
11. The certification does not address any private matters of a sensitive nature.
12. We note that the annual number of respondents affected by this collection depends on the services being auctioned within a given year; the number of respondents fluctuates considerably year-to-year, and we are not able reasonably to estimate the number of applications where tribal lands bidding credits (TLBCs) will be available for the coming three years. However, based on data tabulated from the nine auctions since March 2004 in which TLBCs have been available, we estimate that 3 applicants annually may seek to take part in the tribal lands bidding credit program. This estimate is based on the following:
 - In Auction No. 55 (900 MHz SMR, March 2004), no applicants sought TLBCs.
 - In Auction No. 56 (24 GHz Band, August 2004), no applicants sought TLBCs.

- In Auction No. 57 (AMTS, September 2004), two applicants sought, but were not granted, TLBCs.
- In Auction No. 58 (Broadband PCS, February 2005), no applicants sought TLBCs.
- In Auction No. 59 (Multiple Address System, May 2005), one applicant sought, but was not granted, a TLBC.
- In Auction No. 61 (AMTS, August 2005), two applicants sought, but were not granted, TLBCs.
- In Auction No. 63 (MVDDS, December 2005), no applicants sought TLBCs.
- In Auction No. 66 (AWS-1, September 2006), four applicants sought TLBCs. Three of those applicants amended their Form 601s to withdraw their requests for TLBCs, the fourth TLBC request remains pending.
- In Auction No. 69 (1.4 GHz, March 2007), no applicants sought TLBCs.

The March 2004 – March 2005 total number of applicants seeking TLBCs is two.
 The March 2005 – March 2006 total number of applicants seeking TLBCs is three.
 The March 2006 – March 2007 total number of applicants seeking TLBCs is four.

The annual March 2004 – March 2007 average is **3**.

We estimate that each applicant will require the assistance of administrative personnel to read the instructions, look through existing records, gather and maintain required data, and complete the FCC Form 601. We estimate that administrative personnel will need up to 10 hours to complete these tasks. We estimate that each applicant for the bidding credit will spend up to 190 hours (10 in-house certifying counsel and 180 outside negotiating counsel) to obtain tribal consent to deploy facilities to qualifying tribal lands and file the necessary certifications and waivers. This estimate is based on our prior experience with comparable submissions.

3 applicants x 10 hrs (administrative personnel) = 30 hours
 3 applicants x 10 hrs (in-house certifying counsel) = 30 hours
 3 applicants x 180 hrs (outside negotiating counsel) = 540 hours

Total Annual Burden = 600 hours.

13. There will be no capital startup cost incurred. However, we estimate the annual operations and maintenance costs that applicants incur will use administrative personnel at \$20.00/hour, inside counsel at \$200.00/hour to file certifications and waivers, and outside counsel at \$200.00/hour to negotiate with tribal governments. Further, we estimate that applicants will use in-house attorneys to prepare the necessary certifications.

30 hours x \$20.00 = \$600.00 (administrative)
 30 hours x \$200.00 = \$6,000.00 (in-house certifying counsel)
 540 hours x \$200.00 = \$108,000.00 (outside negotiating counsel)

Total Annual Burden Cost = \$108,000.

14. Cost to the Federal Government:

The government review time per response for this submission is estimated at 8 hours for a GS-14 level reviewer per application.

3 applications x 8 hrs. x \$45.41 = \$1,089.84.

Total Annual Cost Burden for the Federal Government = \$1,089.84.

15. The burden has been modified to account for the number of potential respondents. This is due to the changing number of licenses estimated to be auctioned during a given year. In spite of the few applicants that are actually affected, the number of applicants potentially affected is in the hundreds, perhaps thousands. In other words, while few applicants have actually attempted to take part in the TLBC program, almost all applicants in any auction where TLBCs are available could take part in the program. Because so many could possibly participate, we need to continue OMB approval for this collection.
16. This data will not be published for statistical use.
17. We do not seek approval to not display the expiration date for OMB approval of this information collection.
18. The Commission is reporting an exception. When we published the 60 day notice, we reported an incorrect annual cost and stated that it was an extension rather than a revision. With this submission, and a correct 30 day notice published, we are reporting more accurate estimates for this collection.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.